

Government Regulation of Railway Operation

AN ADDRESS

By SAMUEL O. DUNN

Editor of the Railway Age Gazette

Before The Railway Club of Pittsburgh

At Pittsburgh, September 25, 1914



3

Government Regulation of Railway Operation

AN ADDRESS

By SAMUEL O. DUNN

Editor of the Railway Age Gazette

Before The Railway Club of Pittsburgh

At Pittsburgh, September 25, 1914

Digitized by the Internet Archive
in 2018 with funding from

This project is made possible by a grant from the Institute of Museum and Library Services as administered by the Pennsylvania Department of Education through the Office of Commonwealth Libraries

GOVERNMENT REGULATION OF RAILWAY OPERATION

By SAMUEL O. DUNN,
Editor of the Railway Age Gazette.

The subject of my paper, "Government Regulation of Railway Operation," was suggested by your President. I interpreted it to refer to regulation of what we ordinarily understand as operation, namely, the construction, equipping and maintaining of railways and the moving of their engines, cars and trains. It is, therefore, to regulation of operation in this sense that I shall confine myself.

There are some phases of this subject which it would be a waste of time to discuss. It would be a waste of time to discuss whether the government has power to regulate operation. It has been settled by the courts that both the states and the nation have that power. It would be a waste of time to discuss whether there should be some regulation of operation. There is already much of it, and everyone agrees that, so long as the railways are owned by private companies, there always will be and always ought to be a good deal of it. In fact, it is one of the advantages of private ownership that under it the government can regulate the management of railways, and one of the disadvantages of public ownership that under it the government cannot do so, simply because under public ownership the government is the manager. The large questions as respects regulation of operation which remain to be settled are, what its purposes should be, how comprehensive its scope should be, what form it should take, and by whom the regulating should be done.

A good many people have done little else for some years but evolve theoretically complete and perfect schemes for the regulation, not only of railway operation, but of all parts of the business of all kinds of public service corporations; and the less experience they have had in connection with the business of such concerns, the more assurance they have shown in setting forth how they should be regulated. We shall never get very far by following such people. A satisfactory and helpful policy

of regulation can be developed only by a painstaking study of the conditions to be dealt with by both railway officers and regulating authorities, and by co-operation between them in cautiously trying out regulatory measures until experience shall show what ought to be done and what ought not to be done, what can be done and what cannot be done. But frank discussion of the problem may, at least, tend to help bring about the needed study of the conditions and the needed co-operation between railway officers and the regulating authorities; and, therefore, frank discussion may do good, even though those participating in it may, as I do tonight, express their views with many inward questionings and with the reservation of the privilege of changing them if they are shown to be wrong.

Some Shortcomings of Railway Plants and Service.

The great requisites of good railway service are reliability, conveniency, comfort and safety. Our railway service has many shortcomings as respects all these matters. This is not saying that it is all bad; that it is worse than that of other railways; or that its shortcomings are due to any particular class or classes of persons. The service of some of our railways is better than that of others; in many respects our service is better than that of any other railways; and many of the shortcomings which it has are due to the special conditions under which it has been developed and is carried on. But after all, it must be conceded that we have much poor track, much defective equipment, many lines that are without block systems, many whose trackage, terminals and equipment are not adequate in normal times to the demands of their business, numerous unprotected grade crossings, many employes who have not been properly trained and disciplined or on whom training and discipline have been lost. In consequence, we have many trains that ride uncomfortably, many that are late, congestion and delays to traffic when business is good, and an accident record that is discreditable. This is but an incomplete enumeration of our railways' shortcomings of plant, personnel and service. It is desirable from the standpoint of all that these things shall be improved. If government regulation will help improve them, then government regulation is desirable. But if government regulation is to do this it must courageously and effectively attack the primary

causes of the unsatisfactory conditions. What, then, are some of these primary causes, and how may the government effectively attack them?

Causes of Unsatisfactory Railway Conditions.

The primary causes of the defects of plants and service are numerous and various. Among them is excessive competition. Many assume that competition always is wholesome, and regard it as the specific for all commercial and industrial ills. But, in the railway business at least, its effects are mixed, some being good and some bad. Competition between railways often tends to stimulate them to improve their track, equipment and train service. But when the competition in service becomes unequal because, for one reason or another, the financial resources of the competitors are unequal, it often does harm which largely offsets its good. The stronger lines are able to put and keep their track, structures and equipment in relatively good condition; to build second tracks where they are needed; to install block systems, and so on. The weak roads are not able to do all these things, and in the effort to get and hold business they are likely to do the things which attract the most favorable notice from the public and neglect those things failure to do which attracts the least unfavorable notice. The ordinary traveler judges railways chiefly by their passenger equipment and train schedules. Therefore, not a few railways are tempted in the competitive struggle to neglect their track, to refrain from installing block systems, and at the same time to buy and operate heavy modern passenger equipment and to publish as fast schedules for their trains between competitive points as are published by rival lines with better track and structures. Among the results are numerous late trains; running that is too fast for the track, with all its attendant discomforts and dangers, and contributions to the statistics of collisions and derailments published by the Interstate Commerce Commission, and especially to those regarding derailments, which within recent years have shown alarming increases.

Unrestricted competition in other lines of business may not so plainly have bad effects. In other businesses it results in the long run in the elimination of the weaker; and whether one regards that as good or bad depends on his economic philosophy.

But unrestricted competition between strong and weak railways always has some bad effects because in the railway business the weaker competitor never is and never can be entirely eliminated. The ultimate result of unrestricted competition is to reduce the weaker lines to a position where they will go on indefinitely rendering a service which is unprofitable to their owners and managers and unsatisfactory and unsafe to the public.

The most important reason for the shortcomings of the physical properties, and for many of the resulting defects of the service, of the railways of the United States is their relatively small earnings; and their relatively small earnings are due partly to their relatively light traffic, but more to their low rates. The railways of Germany earn over \$22,000 gross per mile; those of Great Britain almost \$27,000; those of Belgium over \$22,500; those of Switzerland \$15,000; those of France over \$14,500; while the average for our roads has never been \$13,000. Now, everything a railway buys must be paid for, directly or indirectly, from gross earnings. Furthermore, our railways have to pay wages twice as high as those of European railways. As the railway dollar of the United States will not go nearly as far as the railway dollar of Europe, and as the number of dollars earned per mile here is somewhat less than in France and Switzerland, only a little more than one-half as great as in Belgium and Germany, and less than half as great as in England, the opportunities our railways have had for putting their properties in good shape have been relatively much smaller than those of the other railways named. In their earlier history their earnings were small because most of them were built into undeveloped territory where the traffic was sparse, and as soon as a competing road was built they began destructive rate wars. Their earning capacity has continued to be too small because just when they very sensibly began to make traffic arrangements or community of interest arrangements to increase and maintain their rates, and earnings government regulation stepped in and destroyed the arrangements or forbade the increases in rates.

Another important cause of the relative want of safety and other defects of our railway operation and service is the shortcomings of their personnel. We have been told by an authority whose views carry great weight with the public, viz., the Interstate Commerce Commission, that "The most disquieting and

perplexing feature of the problem of accident prevention is the large proportion of train accidents caused by dereliction of duty by the employes involved." To the lamentable tendency of employes to disregard operating rules and take risks is also attributable a great majority of the casualties and fatalities—other than those to trespassers—which result from accidents other than train accidents. For example, while the application of automatic couplers to practically all engines and cars has largely reduced the accidents occurring in connection with coupling and uncoupling, there are still many of them; and their continuance is due mainly to the risks carelessly or recklessly taken by employes. The many accidents resulting from employes stepping in front of moving cars, engines and trains are due to the same causes. Probably the blame for such accidents should not be visited entirely on the employes. It is the duty of the managements to use all available disciplinary and educational means to instruct all train employes so that they will not be careless or reckless. But the employes individually, and their organizations also, owe a duty to themselves and others; and the state has its duty; and few who are familiar with the conditions would say that the employes, their organizations and the various governments have done as much in proportion to reduce this fatal carelessness and recklessness as have the railway managements.

The same laxity which causes so many accidents is responsible for numerous other defects of service. While the frequent lateness of trains is often due to the policy of managements in publishing schedules which cannot be maintained, it is also often due to chronic delays at stations which can be stopped only by greater alertness and celerity on the part of station and train employes.

The statistics which constitute the worst feature of the accident reports of the Interstate Commerce Commission are those regarding fatalities to trespassers, which every year number more than one-half of all the fatalities reported. While the deaths of trespassers are charged up against the railways, as a matter of fact, the municipal and state governments, which do not make and enforce proper laws against trespassing, and not the managements of the roads, are responsible for them. They

are not really railway accidents at all; and, therefore, the statistics regarding them should not be included under that head.

What Has Government Regulation Already Done?

What has government regulation done about the various defects of the physical properties, of the operation and of the service of our railways? What can and should it do about them? And what form should the regulatory legislation be given, and to whom should its administration be entrusted?

There have been many laws passed by state legislatures and Congress, and many orders issued by state commissions and the Interstate Commerce Commission, for the regulation of operation. These relate to numerous and varied subjects, including safety appliances on locomotives and cars, drinking cups on trains, locomotive headlights, block systems, the drinking of intoxicating liquors on trains, the frequency with which employes must be paid their wages, the number of hours they may be kept on duty, the number of them that must be employed on trains, the elimination of grade crossings, the speed of live stock trains, the clearances between tracks and overhead and lateral structures, and so on *ad infinitum*. At almost every session of a state legislature some new kind of law, and at almost every session of some state commissions some new kind of order, for the regulation of operation is produced. It would be astonishing if all this mass of regulatory measures did not contain some that were good. But those which have been conceived in intelligence and public spirit and brought forth in justice are so few compared with the total that you will have great difficulty in finding them. Having found them, you are apt to think they are adventitious and not the result of deliberate thought and choice. Of all the subjects to which our law-making and law-administering bodies have applied themselves, to none have they devoted more stupidity, ignorance and unfairness than the regulation of railway operation. In most cases they have not tried to ascertain the conditions to be dealt with, the real evils to be remedied or the results their laws or orders probably would produce.

The character and the fruits of their labors have corresponded. If a bonfire were made of every state regulation in existence the operation of our railways would be made more economical and their service better and safer; and there are

some federal regulations which might well be added to the conflagration.

I have referred to excessive competition as one of the causes of the shortcomings of our railway service. Have the regulators perceived this and acted accordingly? On the contrary, the various anti-trust laws, and especially the federal anti-trust law, have been applied to railways in all their rigor. Every consolidation, agreement or arrangement designed to moderate the fury of competition has been treated as a crime. Some such arrangements, as, for example, that regarding differential passenger fares between Chicago and New York, under which the fares charged are adjusted to the service and schedules of the different roads and trains, have been tolerated. But the general tendency of regulation has been to encourage fierce competition, whereas the public welfare demands that such competition shall be discouraged. It would be to the interest of both the railways and the public for the roads to be permitted to make binding and enforceable agreements regarding both competitive rates and competitive service subject to the supervision of competent regulating bodies. The spirit of our laws is hostile to such action.

In some cases when railways with bad track have been running trains at unsafe speeds to meet the competition of roads having better track, state commissions have fixed maximum speeds to be observed until their tracks were improved. Such action is justifiable and desirable. But the need for it is created chiefly by excessive competition. Why continue to stimulate the cause while trying to nullify the effect?

Furthermore, such action by the commissions merely substitutes one kind of poor service for another, and does not go to the root of the evil. It is better that trains should be slow than that they should be unsafe, and our accident record would be better if some railways had fewer trains with schedules too fast for their track and facilities. But a reasonably fast service is desirable on all railways; and when the passenger trains of a railway cannot make good speeds safely the primary evil consists, not in their attempts to run their trains fast, but in the conditions of track, structures, equipment, signals and so on, which make it unsafe to do so. In that case the true function of regulation is, not merely to fix some low maximum speed,

but to ascertain the causes of the unsatisfactory physical conditions and stimulate and co-operate with the railway management in removing them. So as to all other deficiencies of roadway, equipment and service.

Now, while there has been much regulation purporting to be intended to cause physical improvements in railways, there has been very little which has been adapted to that end. Probably the best legislation for the regulation of railway operation ever passed was the safety appliance law enacted by Congress in 1893, together with the subsequent amendments to it. This law required the railways to equip their trains with power brakes, automatic couplers, secure grab irons and other safety appliances. But it did not require them to do anything which the investigations of their own officers had not shown was practical, or which the practice of many of the more progressive lines had not indicated was desirable; and it gave the Interstate Commerce Commission a broad discretion in administering the law, which made it possible for the railways and the Commission closely to co-operate. Such co-operation was secured, and the result has been a steady improvement of the safety appliances on equipment of all kinds from the passage of the law until the present time.

In this case it was right and desirable that the legislation passed should apply uniformly to all roads, because, as freight cars circulate freely throughout the country, it would be dangerous to have those of different roads equipped in different ways. But in many cases to apply the same provisions to large groups of roads or to all of them is unjust and injurious. The needs and deficiencies of different roads may be wholly different. One may have bad track and a good block system; another, bad track and good equipment; another, good track, but neither good equipment nor a good block system. Evidently if the same requirement, as for steel cars or block signals, is imposed on all, the results to the roads themselves and to the public will be widely different. If a road has bad track a law requiring it to install heavy steel equipment is almost certain to increase the number of accidents on it. Similarly, there is not the same need or justification for requiring the elimination of grade crossings on a road operating through a sparsely settled district as for requiring it on one operating through a densely populated territory.

In the preparation of most of the regulatory legislation such points have not been considered. The same requirements have been imposed on many, or even all, roads without reference to their differences in conditions. Railways have been required to use high power headlights regardless of whether they did not have greater need for block signals. They have been required to increase their clearances regardless of whether it would not have been more in the interest of safety for them to have spent the money on their tracks. They have been required to waste millions in employing useless men in train crews, when they needed the money to properly maintain their equipment. Even when improvements which were needed have been required the legislation regarding them often has been wholly unjust. In the city of Chicago the roads are being forced to bear the entire cost of elevating their tracks, which it is estimated will be \$150,000,000, and this in spite of the fact that many more of their grade crossings have been created by streets being opened across their tracks than by their tracks being opened across streets.

Regulation of Operation Largely a Financial Question.

Finally, law-making bodies and commissions are disposed to require all kinds of expensive improvements, while persistently ignoring the fact that it will be impossible to put the railways of this country in satisfactory condition without increases in their rates and net earnings. When the roads ask for increases in rates an attempt always is made to show that they are earning enough on their *present* investment. The Interstate Commerce Commission in its decision in the Eastern rate advance case conceded that this was not true of the eastern railways. But even if it were true of all the railways, this would not show that there ought not to be general advances in rates. If the roads are now earning barely a reasonable return on their present investment, clearly they cannot, with present rates and earnings, raise the billions which must be invested if block systems are to be generally installed, grade crossings to be eliminated, tracks to be strengthened, better equipment to be provided and so on. Most of the investment for such purposes would add nothing to their earning capacity. But a return must be paid on the additional investment; the means of paying it cannot be obtained except by increasing earnings; and the necessary increase in earnings can be gained only by increases in rates.

The question of regulation of railway operation is chiefly a financial one. The railways would gladly make every kind of improvement which the public demands. But the various regulating bodies control what they may earn, and therefore, what funds they can raise. Therefore, the financial problem of regulation of operation is squarely up to the regulating bodies. As long as the earning capacity of the railways is limited as it is now, to require many of them to make one improvement is in effect to forbid them to make others which may be more needed, simply because they have not enough money and cannot raise enough to make all the improvements that are needed.

Besides regulation to compel the railways to make improvements in their tracks, structures, and equipment, there has been a good deal affecting their relations with their employes. The federal government and many of the states have passed laws fixing the maximum hours that certain classes of employes may be kept on duty. Many of the states have passed laws requiring increases in the number of men employed in train crews. All of the legislation affecting the relations of railways and their employes has tended to increase expenses, and most of it has purported to be in the interest of safety. But a large majority of the so-called "safety" laws have been promoted by the brotherhoods of railway employes, and usually their real purposes have been to increase the number of men that must be employed by railways, and to promote the political interests of the lawmakers passing them. The enactment of the provision prohibiting employes from being kept on duty more than 16 hours was justifiable, although the number of accidents traceable to the overworking of employes always has been negligible. The provisions of the federal and the various state laws prohibiting telegraphers concerned with the operation of trains from being kept on duty more than from eight to nine hours, regardless of the extent to which they are concerned with train movement are, as safety measures, indefensible. The same thing is true of the train crew laws.

It is notable that while government regulation has meddled with matters of this sort it has been conspicuously careful to abstain from taking any steps to deal with those derelictions of their duty by railway employes to which the Interstate Commerce Commission attributes a large majority of train accidents.

When a railway employe in England or Germany is guilty of an infraction of duty which causes an accident he is pretty sure to be taken in hand by the government itself. Not so here. The noble and disinterested patriots who regulate railways and enforce laws in this country seldom forget for a moment the voting power of organized labor.

Why has past regulation of operation been what it has been? Too much of it has been inspired by prejudice and vindictiveness. Too much of it has been inspired by the representatives of labor brotherhoods seeking to promote the supposed interests of their members at the expense of the railways and the public, and adopted by lawmakers and commissioners who were thinking very little about the rights of the railways and the welfare of the public and very much about the votes they hoped to get by showing subservience to the labor brotherhoods. Too much of it has been inconsistent or conflicting because the several states and the nation have dealt with the same subjects in wholly different ways. Too much of it has been adopted in ignorance or disregard of whether the railways were able to bear the financial burdens imposed. Finally, most of the regulatory legislation has not been either drafted, adopted, or administered by persons possessing any expert knowledge of the matters with which they were dealing.

How Regulation Should Be Reformed.

Lawmaking bodies are more likely than commissions to be inspired by prejudice and political motives. They are less able than commissions to adapt their regulation to circumstances and conditions, for laws must be broad and sweeping in their terms. The commissions are more likely to act with knowledge, for their members have opportunity to study the conditions to be dealt with and to consider the probable effects of their measures, while lawmakers have not. Therefore, as far as is constitutional and practicable, the regulation of operation should be delegated to commissions. So long as the various states and the nation attempt to regulate operation independently, there will be inconsistencies and conflicts between the regulations adopted by the states, and between those adopted by the states and the nation. Therefore, either the states should be divested of their regulating authority or its exercise should be made subject to

the control of the central government. Most of our regulation of railway construction, maintenance or transportation causes an increase in railway expenses, and, therefore, such regulating should be either done or controlled by the body which chiefly controls railway earnings in order that a proper relationship between income and outgo may be maintained. For all these reasons, and for others that might be mentioned, the Interstate Commerce Commission should be given paramount authority to regulate, not only interstate operation, but all operation.

The Stevens bill, now pending in Congress, apparently would confer on the Commission the large discretionary authority over operation which it seems desirable it shall be given in order that the railways and the public may escape from still worse evils. It would, however, be folly to assume that the mere passage of this or some similar measure would solve the problem. The way laws are administered is as important as their provisions; and the character of their administration depends on the characters, attainments and abilities of those who administer them. Now, as to the personal character and ability of the present members of the Interstate Commerce Commission there is no question. But as to their fitness to administer a law giving them extensive authority to regulate railway construction, maintenance and operation there is serious question. The problems with which they would have to deal would be highly technical and extremely difficult. They are problems with which many men of great experience in railway affairs and of great ability have grappled for years with only partial success. They are problems of which no man can get even a fairly good working understanding without living in the closest touch with them for years. Now, the Commission contains only one man who has had experience in the operation of a railway, and he was not a railway officer. Two of its members were economists in our universities; and the other four were lawyers. Men with their training and experience can hardly know enough about railway mechanical, engineering, maintenance and transportation matters to regulate them intelligently; and it is hard to believe that anybody ever could learn enough about them to regulate them merely by serving on a commission.

The Commission's Organization for Regulation.

It would seem, therefore, that if the Commission is to be

given this extensive authority over operation a great effort should be made to secure the appointment to it of men with official experience in the operating departments of railways. As the Commission deals with a diversity of subjects doubtless it is not desirable that it should be composed entirely of such men, but certainly at least two of its members should be railway experts, one being, perhaps, a technical man of the calibre of chief engineer or superintendent of motive power, the other an operating man of the calibre of general superintendent or general manager. The British Railway and Canal Commission never has more than three members sitting at once, but the law requires at least one of these to be "of experience in railway business." The Railway and Canal Commission is merely a court which passes on rate cases. How much more important it is that a body such as the Interstate Commerce Commission should have members of railway experience!

Besides having members of railway experience, the Commission, if it is to regulate operation extensively, probably should have a subordinate body composed of experts in railway engineering, mechanical, maintenance and transportation matters to look after the details of this part of its work. It already has some subordinate bodies which devote themselves to such details. There is a chief locomotive boiler inspector with two assistants and district boiler inspectors throughout the country. There is a chief inspector of safety appliances with inspectors throughout the country. Unfortunately, almost all of these men have been selected because they were members of and were backed by railway labor brotherhoods. Very few of them have received a technical training, and almost none has risen in railway service above the rank of employes. This does not demonstrate that some of them are not men of ability and of special fitness for their duties. A large proportion of the operating and executive officers of our railways have risen from the ranks. A good many even of the technical experts of the railways, including chief engineers and superintendents of motive power, have done so. And there is no reason why men taken from the ranks by the Interstate Commerce Commission should not likewise demonstrate the possession of more than average ability and develop into experts. In fact, some of them have done so. But, plainly, if the Commission should organize a board to deal with the

problem of regulating construction, maintenance and operation, it would be preposterous for it to fill it with locomotive engineers, conductors and mechanics. Those appointed to such a board should have demonstrated their fitness beforehand; and men who had not risen in the railway service above the rank of employes would not have done this.

When the Commission was directed to undertake the stupendous task of making a valuation of all the railways it did not organize an engineering board composed of railway employes. It organized one composed of the president of the American Railway Engineering Association, of the chief engineer of one of the state commissions, of a man who was both a professor of civil engineering in one of the state universities and chief engineer of the railway commission of his state, and of two consulting engineers. In completing the engineering organization of its valuation department it has drawn men of recognized ability and expertness from the official ranks of railways all over the country. The example the Commission has set itself in organizing the engineering branch of its department of valuation should be followed if it should ever organize a board to have direct charge of its work of regulating operation. It should likewise be followed in selecting the men who doubtless would be employed in making inspections and investigations for it. Its inspectors and investigators should be chosen solely because of their special fitness to do their work fairly and intelligently, and not because they may happen to have the backing of some politician or labor organization.

The Various Steps in Regulation.

When the Commission shall have thus formed its organization, how should it proceed with its work of regulation? It would seem that it should lay the foundation for it by causing careful investigation to be made as to the conditions of railway plants or service which may be at fault and as to the causes of them. For example, if the statistics of the Commission continue to show an increase in the number of derailments it would obviously be the function and duty of the Commission to make or cause to be made an investigation to determine whether this was due to general or local causes and what remedy or remedies should be applied. If the Brotherhood of Railroad Trainmen

should petition the Commission for an order requiring increases in the number of brakemen employed on trains, or if the state legislatures should continue to pass so-called "full crew" laws, it would obviously become the duty of the Commission to make or cause to be made a careful and comprehensive investigation of the question whether a general increase, or local increases, or any increase at all, in the number of men employed on trains was required by the public welfare.

When the Commission believed that it had found bad conditions which demanded some action it would seem that its next step should be to arrange for conferences between its members or representatives and officers of the railways to ascertain whether the proper remedies could not be agreed upon and then applied by the managements of the railways themselves without the Commission issuing any formal order. The Commission in the past has had such conferences with representatives of the railways and of the railway labor brotherhoods regarding the administration of the safety appliance, hours of service and other laws. And in most cases they have led to agreements which were measurably satisfactory to the parties most directly concerned and have secured better results than would have been obtained by the issuance of arbitrary, formal orders which might have and very likely would have resulted in protracted litigation. It is probable that in a large proportion of all cases the railway managements and the Commission could agree as to what each of them ought to do, if they would confer more frequently, more frankly, more fairly and with a minimum of suspicion of each other's good faith. If after investigation and conference the Commission could not get any individual road or all roads to do what it thought should be done it would not follow that it must need immediately issue some mandatory order. It would in a good many cases, if it exercised a salutary self-restraint, simply make public the facts, and then, for awhile at least, await developments. Publicity seems to many persons not to be a very sharp or heavy weapon, but, with all due respect to the Interstate Commerce Commission, the publicity which its hearings and reports have given to facts about the railway business which were previously unknown has, in my judgment, done a great deal more to raise the economic and moral standards of railway management in this country and to improve railway

service than the formal orders it has issued. The power of common sense exercised by making public facts and drawing suitable conclusions from them "does not," as A. T. Hadley has said in discussing the subject of railway regulation, "seem as strong as statutory power to prosecute people and put them in prison, but in the hands of a man who really possesses it is actually very much stronger." Only when other resources fail will a wise regulating body resort to the issuance of mandatory orders. And when it does so it will take the greatest pains to make them as little arbitrary as possible and as well adjusted to the special conditions of each case as possible.

When the Commission shall have completed its organization and set it to work it will be necessary, if its regulation of operation is to be fair and successful, for it to consider every time it issues an order whether the earnings of the lines affected are sufficient both to bear the additional expense its order will cause and to enable them to expend all the money in the maintenance and improvement of their properties which they would have needed to have spent if it had not issued the order. It will not be sufficient for the Commission merely to inspect, to find fault and to issue orders. The managers of most railways know the defects in their properties and service as well now as the Commission will ever know them. And most roads whose earnings are sufficient go ahead as fast as is practicable remedying these defects. Most railway managers are as anxious as the public or any railway commission to see their properties put and kept in the best conditions. Their great problem is to find the necessary money; and this is the greatest problem which the Commission will have to face and help the managements solve, when it undertakes the extensive regulation of operation; and if the Commission does not face that problem courageously and co-operate intelligently with the managements in solving it its regulation of operation will be a failure or worse.

Will Regulation Be Successful?

Suppose state regulation is entirely subordinated to federal regulation. Suppose federal regulation is placed entirely in the hands of the Commission. Suppose the Commission is given a large enough appropriation by Congress properly to perform its functions. Will regulation of operation then be made fair, con-

structive and beneficent? Will the politicians let the Commission alone so that it can do its work right, and will the Commission prove big enough for the job? These are questions no one can answer. The only way to find out will be to try the experiment, as we are now trying that of making a valuation as a basis for the regulation of rates. If it is tried, like the experiment of valuation it will cost the public and the railways large sums; and the new burdens of the Commission, together with its present burdens, will give it the heaviest duties and responsibilities ever imposed on any body of men in this country. If the Commission tries merely to regulate the railways and not to manage them the experiment may succeed. If it tries to manage them, as it now seems to be trying to manage them under the guise of regulating rates, the results of the experiment will be widely different. In its regulation of rates the Commission, instead of confining itself to the duty imposed on it by law, that of determining the reasonableness of rates in view of the actual situation of the railways, is trying to tell their managers all about how they can do their work better, so as to change the situation and thereby effect savings that will make unnecessary advances in rates, which, under present conditions, are conceded to be needed. Now, while the Commission may be able by purely corrective measures to protect the public from abuses which arise in connection with the financing of railways, the making of their rates and the rendering of their service, it never will be practicable for any single body of men, however able they may be and however much expert knowledge they may have, successfully to control the policies and direct the management of all the 250,000 miles of railways in this country.

Let us, therefore, hope that the more authority the Commission is given the more self-restraint and the more disposition to confine itself to its proper functions it will show. Let us hope that it will avoid letting its judgment be warped by the egotistical assumption that because it possesses superior power it must also possess superior wisdom—an assumption which seems rapidly to destroy the sense of proportion of every bureaucracy and which in the long run always has made every form of paternalistic government a failure and a curse to mankind. The Commission might do a great deal more good with its present powers if it would exercise them with a somewhat

franker recognition of its own limitations and in a broader spirit of co-operation with the railway managements. And it may do very little good and much harm with much larger powers unless it shows the greatest patience, forbearance, expertness and courage in exercising them. Wisdom is demonstrated, not by the possession, but by the manner of the use of power; and the success of government regulation of railway operation will not be determined by the amount of power conferred on the Commission, but by the way in which the power that is conferred is exercised.

